

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

e.spire Application to Discontinue Domestic
and International Telecommunications Services

Comp. Pol. File No. 592

ORDER

Adopted: August 2, 2002

Released: August 2, 2002

By the Senior Deputy Chief Wireline Competition Bureau:

1. In this Order, we grant in part and deny in part the application filed by ACSI Local Switched Services Inc., d/b/a e.spire (e.spire), to discontinue providing domestic telecommunications services to approximately 42 customers in New York and an additional 22 customers in Pennsylvania, pursuant to section 214(a) of the Communications Act of 1934, as amended (Communications Act or Act),¹ and section 63.71 of the Federal Communications Commission's (FCC or Commission) rules.² Our conclusion today is based on our stated policy goal of preventing harm to consumers caused by a discontinuance of service;³ a policy goal that in the current climate must be our first and highest priority.⁴

I. BACKGROUND

2. On June 26, 2002, e.spire filed an application (Application) with the Commission requesting authority under section 214(a) of the Act and section 63.71 of the Commission's rules to discontinue domestic and international telecommunications services⁵ to 42 customers in New York and additional 22 in Pennsylvania. In the Application, e.spire stated that it had arranged for

¹ 47 U.S.C. § 214(a).

² 47 C.F.R. § 63.71.

³ *In the Matter of Rhythms Link, Inc. Section 63.71 Application to Discontinue Domestic Telecommunications Services*, Order, 16 FCC Rcd 17,024, 17,025, rel. Sept. 24, 2001.

⁴ Written Statement of Michael K. Powell, Chairman, Federal Communications Commission, "Financial Turmoil in the Telecommunications Marketplace: Maintaining the Operations of Essential Communications," Testimony before the Committee on Commerce, Science and Transportation, United States Senate, July 30, 2002, at 1.

⁵ Discontinuance of international service is governed by 47 C.F.R. § 63.19.

the transfer of certain assets and some (but not all) of the customers in New York to Thorn Communications LLC (Thorn).⁶ According to the Application, on June 21, 2002, e.spire mailed out individual written notices of the proposed discontinuance to each customer that was not to be transferred to Thorn, as required by Commission rules.⁷ In this notice, e.spire notified its customers that it intended to discontinue its service to them on July 31, 2002, or “as soon thereafter as the necessary governmental approvals can be obtained.”⁸

3. By Public Notice dated July 2, 2002, the Commission notified the public that, in accordance with 47 C.F.R. § 63.71(c), the application would be deemed to be automatically granted thirty-one (31) days after the release date of the notice, unless the Commission notified e.spire that the grant would not be automatically effective.⁹ The Commission received comments from three e.spire customers in New York; Sector, Inc., Standard and Poor’s Comstock (S&P), and R. Klein Jewelry Company, Inc (Klein). Each of these customers receives some type of high-capacity service from e.spire.¹⁰ In addition, the Commission received a comment from Allegiance Telecom, Inc. (Allegiance) on behalf of three e.spire customers in Pennsylvania that wish to migrate to Allegiance.¹¹ In all cases, the commenters had begun the migration to a new provider, but object to the proposed cut-off date because they need more time to complete the migration.

II. DISCUSSION

4. Section 214(a) of the Communications Act states that “[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby.”¹² The primary purpose of this requirement is to reduce the harm to consumers caused by discontinuances of service, an important aspect of the Commission’s general obligation under the Communications Act to

⁶ Ultimately, the agreement between e.spire and Thorn was not consummated, and on July 3, 2002, e.spire filed a second application requesting authority to discontinue service to those remaining e.spire customers not affected by the June 26 application. On July 12, the Commission released a public notice of this second application. *See Comments Invited on ACSI Local Switched Services, Inc., d/b/a e.spire Communications, Inc., Application to Discontinue Domestic Telecommunications Services*, Public Notice, Comp. Pol. File No. 594, DA 02-1678 (rel. July, 12, 2002). The thirty-one day period for this second e.spire application will end on August 12, 2002.

⁷ *See* 47 C.F.R. § 63.71(a)(5)(i).

⁸ Application, Exhibit 1.

⁹ *Comments Invited on ACSI Local Switched Services, Inc., d/b/a e.spire Communications, Inc., Application to Discontinue Domestic Telecommunications Services*, Public Notice, Comp. Pol. File No. 592, DA 02-1577 (rel. July, 2, 2002).

¹⁰ Sector receives eight DS3s, and five T1s from e.spire, S&P receives one DS3, and Klein receives one T1.

¹¹ Allegiance’s customers receive a total of three T1s from e.spire. These customers are Eric M. Berman, PC; Wilmington Processing Co.; and Mendel-Silverman, Inc. (Allegiance customers).

¹² 47 U.S.C. § 214(a).

protect and promote the public interest.¹³ As the Commission has stated, “we have retained the right to delay grant of a discontinuance authorization if we believe an unreasonable degree of customer hardship would result,”¹⁴ and will review each application to determine whether proper notice has been given, whether customers or other end users are able to receive service or a reasonable substitute from another carrier, and whether the public convenience and necessity is otherwise adversely affected.¹⁵

5. We believe that the public convenience and necessity would suffer if service were to be disrupted to Sector, S&P, Klein and the Allegiance customers, and accordingly deny e.spire’s application as it applies to these commenters. Both Sector and S&P supply services essential to the operation of the financial services community.¹⁶ Disconnection of e.spire’s services to either Sector or S&P would have a devastating affect on either entity’s ability to provide services to its members, and could have a significantly negative affect on the financial services industry. Klein and the Allegiance customers are small businesses and also demonstrate that they will be adversely affected by discontinuance on August 2, 2002. All of the commenters argue that August 2, 2002 deadline gives them insufficient time to acquire the high-capacity services that they require, and have indicated that they needed additional time, in most instances not to extend beyond the end of August, to obtain the necessary capacity. We believe that is consistent with our public policy obligations that they be given the opportunity to do so.

6. The Commission has considerable discretion in making a finding under section 214,¹⁷ and exercises that discretion today in a manner intended to minimize burdens on e.spire, yet protect e.spire customers from service disruptions. Accordingly, e.spire’s application is granted to the extent that, under section 214 and the Commission’s rules, e.spire may discontinue service on August 2, 2002, to customers other than Sector, S&P, Klein, and the Allegiance customers. For Sector, S&P, Klein, and the Allegiance customers, the application is denied, and e.spire is required to continue to providing service to them for a reasonable period of time, not to extend beyond August 31, 2002, and to take all necessary steps to facilitate their migration to other

¹³ See 47 U.S.C. § 201.

¹⁴ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor (Competitive Carrier First Report and Order)*, 85 FCC 2d 1, 49 (1980).

¹⁵ See 47 C.F.R. § 63.71(a); see, e.g., *AT&T Application to Discontinue Interstate Sent-Paid Coin Service Not Automatically Granted*, Public Notice, NSD File No. W-P-D-497 (Aug. 3, 2001) (requiring AT&T to show how it will minimize the negative impact on the affected customers).

¹⁶ SECTOR is a wholly owned subsidiary of Securities Industry Automation Corporation (SIAC), an entity jointly owned by the New York and American Stock Exchanges to improve the functioning of the nation's securities markets through the application of advanced information processing and communications facilities. SECTOR is responsible for procuring telecommunications services for use by SIAC, the Exchanges and their member firms. Among these services are eight (8) DS3 (or T3) circuits and five (5) T1 circuits from e.spire. S&P’s real-time quotation data is used by hundreds of companies such as AOL, Yahoo, MSNBC, Fidelity Investments, and JP Morgan & Co., with millions of end users relying on their data for financial decisions.

¹⁷ *FCC v. RCA Communications, Inc.*, 73 S.Ct. 998, 1002 (1953).

carriers. If e.spire notifies the Commission that it has fully migrated any of these customers to their new carriers prior to August 31, 2002, the Bureau will expedite a request by e.spire for authority to discontinue service to those customers.¹⁸ Finally, we note that nothing in this Order relieves e.spire from any obligations that it may have under relevant state law or regulation regarding the discontinuation of service to its customers.

III ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, that pursuant to sections 1, 4(i), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, and sections 0.91, 0.291, and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.71, that the application of e.spire to discontinue domestic telecommunications IS GRANTED IN PART AND DENIED IN PART, consistent with its obligation to continue providing service to the customers identified in the body of this order and to facilitate the migration of those customers to other carriers.

8. IT IS FURTHER ORDERED that e.spire shall report to the Commission when these customers have been successfully migrated to other carriers.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Carlisle
Senior Deputy Bureau Chief
Wireline Competition Bureau

¹⁸ We believe that our actions today will impose a minimal burden upon e.spire. In an *ex parte* dated July 31, 2001, e.spire agreed to continue service in New York as needed through August 26, 2001, to allow customers to move to other carriers. E.spire also indicated it would provide service in Pennsylvania through August 18, 2001. See Letter from James J. Freeman, counsel to e.spire, to Marlene Dortch, Secretary, FCC (July 31, 2001). Although this order imposes a longer schedule than that proposed by e.spire, particularly in Pennsylvania, we expect that most, if not all, of the affected customers will have moved to their new carriers before the dates proposed by e.spire.